

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 702 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KAMINIDEVI ASHOKKUMAR BHATIYA

Versus

STATE OF GUJARAT

Appearance:

MR DEVANG T SHAH for Petitioner

Mr. N.D. Gohil, A.P.P. for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 17/08/1999

ORAL JUDGEMENT

Rule. Learned A.P.P. Mr. N.D. Gohil waives
service of rule on behalf of the respondent-State.

The petitioners have prayed for a writ or
direction to quash and set aside the order passed by the
learned J.M.F.C., Fifth Court, Surat dated 12-7-1999
passed below Exh.12 in Criminal Case no.1340/93 and also

the order passed by the learned Sessions Judge dated 29-7-1999 in the proceedings of Criminal Revision Application no.90/99.

The present petitioners are facing prosecution in connection with CR no.I 12/92 registered at Salabatpura Police Station, Surat in respect to offences made punishable under Secs. 420, 467, 468 and 471 of I.P.C. That Criminal Case no.1340/93 is registered on the basis of charge-sheet filed against the petitioners after investigation of the said offences. That the petitioners have appeared before the Court and after the plea of the petitioners was recorded the petitioners moved application Exh.12 to claim exemption from remaining present personally in the Court. That vide order dated 24-8-1993, the then learned J.M.F.C. granted exemption to the petitioners from remaining personally present in the Court till further orders.

It appears from the record that subsequently vide impugned order dated 12-7-1999, the learned J.M.F.C., Fifth Court, Surat revised the said order and directed the petitioners to remain personally present on each date. The petitioners challenged the said order vide Criminal Revision Application no.90/99 in the Court of Sessions at Surat. That vide order dated 29th July, 1999, the learned Sessions Judge rejected the Revision Application and confirmed the impugned order of J.M.F.C., on the ground that order granting exemption being interlocutory order, revision is not maintainable and hence, the petitioners have filed the present petition.

In the matter of Jayantilal Chhaganlal Panchal and Others vs. Shirish Shantilal Pandya and Another reported in 1986 G.L.H 166 this Court has observed in paragraph 1 as under:

"The presence of the accused is not to be insisted for by the trial court on each and every occasion of the hearing. The trial before a criminal court is required to be conducted within the presence and hearing of the accused. This is the right of an accused conferred by the Legislature. This right of the accused cannot be turned into, in his obligation and it cannot be made an instrument of harassment and oppression. An accused may choose to remain absent at the time of trial and if the presence of the accused is not necessary for the further conduct of the trial, there is no reason why the court should not grant him exemption from remaining personally present in Court."

Furthermore, in the matter of Jayantkumar Chhotabhai Patel vs. Shreyans Shantilal Shah and Ors., reported in 1995(2) G.L.H. (U.J.) 7, this Court reiterated the said proposition of law as under:

"4. To avert such a situation and to cause least inconvenience to the parties and have a speedy trial, the learned Magistrate should grant exemption to the accused, when the question of their identity is not involved and such exemption should be granted on condition that the Advocate for the accused undertakes in such exemption application that he has received full factual instructions in the matter, even to proceed in absence of his client, and will not ask for adjournment on the ground of receiving instruction from his client/accused, and will make his client present before the court as and when required by the court. Any breach of this undertaking will automatically cancel the exemption and the learned Magistrate then may procure the presence of the accused in accordance with law, if the accused do not remain present on the next adjourned date."

In the instant case, perusal of the impugned order below Exh.12 clearly suggests that no reasons are assigned by the learned J.M.F.C., to revise the earlier order dated 24-8-1993 granting exemption to the petitioners in the absence of any reasons, it is difficult to hold that the impugned order is just, proper or reasonable. The learned Sessions Judge ought to have considered the above stated legal proposition settled by this Court and should have allowed the revision in the facts and circumstances of the case.

On the basis of the above stated ground, the petition is allowed. The impugned order dated 12-7-1999 passed by the learned J.M.F.C., Fifth Court, Surat in the proceedings of Criminal Case no.1340/93 as well as the order dated 29-7-1999 passed by the learned Sessions Judge in the proceedings of Criminal Revision Application no.90/99 are hereby quashed and set aside. The learned J.M.F.C., Fifth Court, Surat is directed to proceed further with the trial of Criminal Case no.1340/93 and to conclude the same in accordance with law. The petitioners who are accused of Criminal Case no.1339/93 should be granted exemption for remaining personally present during the trial and should be asked to remain present personally only if their presence is required under the law.

Rule is made absolute to the aforesaid extent

only. Direct service is permitted.

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